TORTS — IN GENERAL — NON-NATURAL USE OF LAND WITHOUT NEGLIGENCE. — A tramway company paved its roadway with creosoted wood, the fumes of which injured the plants and shrubs of the plaintiff, a market gardener. The company was not guilty of negligence, and it did not know that the creosote might cause damage on the adjoining land. There was no finding that the use of creosote was likely to cause damage. *Held*, that the plaintiff may recover for the damage suffered. *West* v. *Bristol Tramways Co.*, 99 L. T. R. 264 (Eng., Ct. App., March, 1908).

It has been held in England that "a person who brings upon his land anything likely to do mischief if it escapes is *prima facie* answerable for all the damage which is the natural consequence of its escape." *Rylands* v. *Fletcher*, L. R. 3 H. L. 330. This extraordinary liability does not extend to everything brought on the land, but only to such things as are likely to do damage. It would seem to follow that the plaintiff must allege that the thing brought upon the land was likely to do damage if it escaped. If that is true, the burden of proving the truth of the allegation must be on the plaintiff. But the principal case puts the burden of proof on the defendant. It is submitted that this case marks a material extension of the doctrine of *Fletcher* v. *Rylands*, and that it is unjustifiable both on principle and in the light of subsequent cases limiting that doctrine. *Nichols* v. *Marsland*, L. R. 10 Exch. 255; *Box* v. *Jubb*, 4 Ex. D. 76. In this country the doctrine in any form has never been regarded with favor.

TRADE UNIONS — STRIKES — RIGHT TO SECURE CONCERTED ACTION BY IMPOSITION OF FINES ON MEMBERS. — The defendant unions ordered a strike against the plaintiff to enforce a demand for higher wages and a shorter day. To induce their members to obey this order, the unions threatened to fine them if they continued to work. The fines were to be levied in accordance with the by-laws of the unions. *Held*, that the defendants be enjoined from this method of intimidation. (Two judges dissenting.) *Willcutt & Sons Co.* v. *Bricklayers' Benevolent and Protective Union*, 85 N. E. 897 (Mass.).

This decision follows a previous ruling by the same court. *Martell* v. *White*, 185 Mass. 255. And it is in accordance with what is believed to be the better view. *Boutwell* v. *Marr*, 71 Vt. 1. See 17 HARV. L. REV. 558; 20 *ibid.* 355, 356. That the person intimidated has voluntarily joined the union and agreed that a fine may be imposed upon him does not prevent the enforcement of such a penalty from being as against some third person an unlawful method of coercion. Nor can it justify conduct otherwise unlawful. *Boutwell* v. *Marr*, *supra*. See *Booth* v. *Burgess*, 65 Atl. 226–233. It is not the interest of the members in their own freedom to deal with the employer, but his right that no improper means shall be used to restrain them from contracting with him, which the court is asked to protect. The situation is essentially the same as where a trade union or other voluntary association secures concert of action among outsiders by means of threats or intimidation. And that such a method of procedure is unlawful is well settled. *Barr* v. *Essex Trades Council*, 53 N. J. Eq. 101.

VESTED, CONTINGENT AND FUTURE INTERESTS — ESTOPPEL BY DEED: PRIVITY OF HEIR. — A testator devised land to A for life, to the children of A after her death, and, if A died without leaving children surviving her, to B and his heirs. A had one daughter who died during the mother's life. B died before A, leaving C and X his heirs. C, during the life of A, purported to convey the land to D with warranty. Both C and X died before the death of A. *Held*, that the will leaves a contingent remainder to B and his heirs, that nothing passes to D by the deed from C, and that the heirs of C are not estopped by the deed from claiming their interest in the land as against D. *Golladay* v. *Knock*, 85 N. E. 649 (Ill.).

At common law a deed which purports to convey a contingent remainder takes effect, if at all, only by way of estoppel. *Stewart* v. *Neely*, 139 Pa. 309. Whether the heirs of C in the principal cases are estopped by his deed from setting up their title against D depends on whether they take by descent in

privity with C or by purchase without such privity. For estoppel by deed affects privies of the grantor. *Bank of Utica* v. *Mersereau*, 3 Barb. Ch. (N. Y.) 528. But it does not affect those not claiming under the grantor. *Kitzmiller* v. *Van Rensselaer*, 10 Oh. St. 63. Heirs are generally in privity with the ancestor. *Bank of Utica* v. *Mersereau*, *supra*. But heirs are not in privity with the ancestor if they acquire title otherwise than by descent from him. *Russ* v. *Alpaugh*, 118 Mass. 369. And a contingent remainder may pass to the heirs of the remainderman, or even to his devisee under the common statutes concerning wills. *Loring* v. *Arnold*, 15 R. I. 428. Here, however, the court held that the heirs of C took their claim directly under the original will, and not by descent from C, because title never vested in C. *Cf. Hall* v. *Nute*, 38 N. H. 422; *Schmidt* v. *Jewett*, 127 N. Y. App. Div. 376.

WITNESSES — COMPETENCY IN GENERAL — TESTIMONY AS TO PERSONAL TRANSACTION WITH DECEDENT. — A New York statute provides that in an action against an executor a party may not be examined as a witness in his own behalf concerning a personal transaction or communication between the witness and the deceased. A sued B's executors on a note alleged to have been executed by B. A, as witness in his own behalf, was asked, "Have you seen B write his name so as to familiarize yourself with his signature?" *Held*, that he is incompetent to answer. *Wilber* v. *Gillespie*, 127 N. Y. App. Div. 604.

New York courts have been very liberal in construing the words "personal transaction" in this statute. Thus, it has been held that a beneficiary who is contesting a will cannot testify to irrational acts of the testator in his presence. *Holland* v. *Holland*, 98 N. Y. App. Div. 366. Nor can he testify to a conversation between the testator and a third party at the time the will was executed. *Matter of Bernsee*, 141 N. Y. 389. Such testimony is admissible under similar statutes in other jurisdictions. *Erusha* v. *Tomash*, 98 Iowa 510; *Wollman* v. *Ruehle*, 104 Wis. 603. And even the New York courts realized that the rule has been stretched to its extreme, but they defend their decisions as being in furtherance of justice. See *Matter of Will of Dunham*, 121 N. Y. 575. The present decision involves holding that merely seeing a man write his name, in whatever circumstances, is a personal transaction. Even in view of previous holdings, none of which have gone so far, it seems doubtful whether such an absolute departure from the clear meaning of the words is justifiable.

WITNESSES — EXPERTS — COMPENSATION EXCEEDING REGULAR FEE. — The defendant appealed from a conviction of forgery, assigning as error that the court below had sustained a physician, a witness for the defendant, in his refusal to answer a hypothetical question as to the effects of a disease under certain conditions, unless he should receive compensation in excess of the regular witness fee for such expert testimony. *Held*, that the court erred in sustaining the physician's refusal to answer the hypothetical question. *State* v. *Bell*, 111 S. W. 24 (Mo., Sup. Ct.).

For testimony involving preparation, with a view to pronouncing a deliberate opinion upon particular circumstances of the case, an expert may demand extra compensation. *People* v. *Montgomery*, 13 Abb. Pr. N. S. (N. Y.) 207. Whether the same privilege should extend to experts called upon simply for impromptu answers to general and hypothetical questions, the cases are not agreed. Recent decisions and the weight of authority, however, are opposed to such an extension. *Main* v. *Sherman Co.*, 74 Neb. 155. *Contra*, *United States* v. *Howe*, 26 Fed. 394. The minority view, which declines to discriminate between the two kinds of expert testimony, although finding no support in recent common law decisions, has in a few states been perpetuated by statute. *Farmer* v. *Stillwater Water Co.*, 86 Minn. 59. But such a statute does not apply to a witness to whom the facts are already known, merely because he possesses professional skill which may enable him to observe and recount those facts more intelligently. *Anderson* v. *M., St. P. & S. Ste. Marie Ry. Co.*, 103 Minn. 184. Where, then, experts must give impromptu answers without additional witness fee, a promise to pay such additional fee is unenforceable for lack of consideration. *Burnett* v. *Freeman*, 125 Mo. App. 683. And in the absence of such a